The Upper Tribunal
Immigration and Asylum Chamber) Appeal Number: PA/08902/2016

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 21 November 2017	**On 23 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

H. A.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Boyle, Halliday Reeves Law Firm
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq who entered the UK illegally. He made an application for protection on 1 February 2016, and the Respondent refused that protection application on 27 July 2016. The Appellant's appeal to the First tier Tribunal ["FtT"] against that decision was heard on 22 March 2017, and it was dismissed on all grounds, in a decision promulgated on 24 April 2017 by First Tier Tribunal Judge Head-Rapson.
2. The Appellant was granted permission to appeal that decision on 25 August 2017 by First tier Tribunal Judge Pedro. The challenge was however limited to the decision to dismiss the humanitarian protection

appeal. Permission was granted on the basis that it was arguable the Judge had either failed to follow current country guidance, or, failed to provide reasons for choosing not to do so, and, had arguably erred in her approach to the issue of internal relocation to avoid the risks to the Appellant in his home area.

3. The Respondent has filed no Rule 24 Notice in relation to the grant of permission, opposing it. Neither party has made formal application to adduce further evidence. Thus the matter comes before me.

Error of Law?

4. Mr Boyle accepts that the Appellant pursues no challenge to the dismissal of the asylum and human rights appeals.
5. Following the confirmation and amendments made to the country guidance issued by the Upper Tribunal in AA (Article 15(c)) Iraq CG [2015] UKUT 544, the proper approach is set out by the Court of Appeal in AA (Iraq) [2017] EWCA Civ 944. The Judge did not have the benefit of this amended guidance which was only promulgated on 11 July 2017, after her own decision.
6. Having dismissed the asylum and Article 3 appeals, the Judge's starting point for the humanitarian protection appeal was to identify the Appellant's "home area" within his country of origin, and the point of return. In this case the Appellant had identified a village in the province of Kirkuk at both interviews, and the sole point of return to Iraq remains Baghdad. The province of Kirkuk was acknowledged to be a "contested area" for the purposes of humanitarian protection in AA, and the Judge could not go behind that without clear evidence of a durable and significant change in circumstances. In fact in this appeal, there had been a formal concession by the Respondent to the effect that it was (RFR #26) and that concession was not withdrawn at the hearing. Accordingly it was not open to the Judge to find, as she did, that Kirkuk is no longer deemed to be a "contested area" [56].
7. That concession required the Judge to analyse (in the light of the unchallenged findings of fact) whether it was reasonable to expect the Appellant, returned to Baghdad on a current or expired passport, or laisser passer, to be able to relocate. (The Appellant's case was that he had in the past been issued lawfully with a legitimate Iraqi passport, which he had used to leave Iraq lawfully by air, but had since lost [Q124]. This was therefore an individual who should be able to approach the Iraqi Embassy in London for a replacement passport, since he ought to be able to supply the fingerprints and other biographical details that would allow that to occur by reference to the centralised records of the passport office, without the need for recourse to the "family book" in Iraq.)
8. That analysis needed to be undertaken in the light of the guidance to be found in BA (returns to Baghdad) Iraq CG [2017] UKUT 18, and since the Appellant had been found to be a Sunni Kurd, that analysis needed to focus upon his ability to relocate to either Baghdad, or, to the KRG. In turn that required a focus upon the issue identified in AA as confirmed by the Court of Appeal;

Whether K, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR, will be fact sensitive; and is likely to involve an assessment of (a) the practicality of travel from Baghdad to the IKR (such as to Erbil by air): (b) the likelihood of K's securing employment in the IKR; and, (c) the availability of assistance from family and friends in the IKR.

9. It is agreed before me that these steps were not undertaken, and that as a result the Judge fell into error. A fact finding analysis needs to take place to consider, inter alia, whether upon lawful entry to the KRG for twenty days, the Appellant would be able to secure employment and support himself, so that he would be able to extend his lawful status in the KRG. Again, given his evidence about his ability to leave Iraq lawfully by air, and his extended family in Iraq, consideration needed to be given to his ability to gain family support upon return to Iraq.
10. In the circumstances the decision discloses a material error of law that renders the dismissal of the appeal unsafe, and the decision must in the circumstances be set aside and remade. I have in these circumstances considered with the parties whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, or whether to proceed to remake it in the Upper Tribunal. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012.
11. Having reached that conclusion, with the agreement of the parties I make the following directions;
    i) The decisions upon the asylum and human rights grounds of appeal are confirmed.
    ii) The decision upon the humanitarian protection ground of appeal is set aside, and that ground of appeal is remitted to the First Tier Tribunal for rehearing.
    iii) The findings of fact set out in paragraphs 48, and 51-55 are preserved.
    iv) The remitted appeal is not to be listed before Judge Head-Rapson.
    v) A Kurdish Sorani interpreter is required for the hearing of the appeal.
    vi) There is presently anticipated to be the Appellant and no other witness, and the time estimate is as a result, 2 hours.
    vii) It is not anticipated by the parties that either has any further evidence to be filed.
    viii) The appeal may be listed at short notice as a filler on the first available date at the North Shields hearing centre after 29 November 2017.
    ix) No further Directions hearing is presently anticipated to be necessary. Should either party anticipate this position will change, they must

inform the Tribunal immediately, providing full details of what (if any) further evidence they seek to rely upon.

x) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Decision

12. The decision promulgated on 24 April 2017 discloses no error of law in the decisions upon the asylum and human rights grounds of appeal, and they are accordingly confirmed. The decision upon the humanitarian protection ground of appeal is however set aside, and that ground of appeal is remitted to the First Tier Tribunal for rehearing with the directions set out above.

Deputy Judge of the Upper Tribunal JM Holmes

Dated 22 November 2017